



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 29, 2003

Ms. Angela K. Washington  
Cowles & Thompson, P.C.  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3793

OR2003-9317

Dear Ms. Washington:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193455.

The Addison Police Department (the "department") received a request for a specified internal investigation report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The information at issue is a completed internal affairs investigation. The completed investigation must be released unless it is excepted from disclosure under section 552.108 or confidential under other law. *See* Gov't Code § 552.022(a)(1). Thus, we will address your claimed exceptions.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.*, 540 S.W.2d at 683. Upon review, we find that the submitted information is not highly intimate or embarrassing and of legitimate public concern. Therefore, the submitted information may not be withheld under section 552.101 or section 552.102 in conjunction with the doctrine of common-law privacy.

Section 552.108 of the Government Code provides in relevant part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov’t Code § 552.108(a)(2). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision Nos. 562 at 10 (1990), 434 at 2-3 (1986).

We note that information about complaints against peace officers generally may not be withheld under section 552.108. For example, the names of complainants, the names of the officers who are the subjects of complaints, an officer's written response to a complaint, and the final disposition of a complaint generally are not excepted from disclosure by section 552.108. Open Records Decision Nos. 350 at 3 (1982), 342 at 2 (1982), 329 at 2 (1982). In addition, section 552.108 is inapplicable where a complaint against a law enforcement officer does not result in a criminal investigation or prosecution. *Morales v. Ellen*, 840 S.W.2d 519, 525-526 (Tex. App.—El Paso 1992, writ denied) (construing statutory predecessor); Open Records Decision No. 350 (1982) (stating that statutory predecessor was not applicable to internal affairs investigation file when no criminal charge against police officer results from investigation). In this case, the submitted information relates to an internal affairs investigation of a violation of departmental policy, rather than to a criminal investigation. Investigations into non-criminal matters are not excepted from disclosure by section 552.108 of the Government Code. *Morales v. Ellen*, 840 S.W.2d at 526 (predecessor statute to section 552.108 not applicable where no criminal investigation resulted). Because the submitted information does not relate to a criminal investigation by the department, we find that the submitted information is not excepted from disclosure under section 552.108. As the department claims no other exceptions, the submitted information must be released.

We note, however, that the submitted documents contain information that is excepted from disclosure under section 552.1175 of the Government Code, which excepts from disclosure certain personal information of licensed peace officers not employed by the department.<sup>1</sup> Section 552.1175 provides in part that

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). However, you do not inform this office, nor does any of the submitted information indicate, whether the individual whose information is at issue is a licensed peace officer who has notified the department of his election of confidentiality for this information in accordance with the above-cited subsections 552.1175(b)(1) and (2).

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<sup>1</sup>The term peace officer is defined by Article 2.12, Code of Criminal Procedure.

*See, e.g.,* Open Records Decision No. 678 (2003) (concluding that county voter registrar was authorized to release voter information made confidential under section 552.1175 of Government Code to another governmental entity, but that transferred information would not be confidential in possession of transferee until recipient governmental entity receives a section 552.1175 notification). If the individual is currently a licensed peace officer who complies with section 552.1175(b), the department must withhold the information we have marked. If not, the department must release this information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Peterson", with a stylized flourish at the end.

Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 193455

Enc. Submitted documents

c: Mr. Richard Glass  
727 Sara Drive  
Mesquite, Texas 75149  
(w/o enclosures)